

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AUXIER FINANCIAL GROUP LLC,

Plaintiff,

v.

JP MORGAN CHASE BANK, N.A.; BANK OF
AMERICA N.A. as Successor by Merger to
LASALLE BANK N.A. as Trustee for
Washington Mutual Mortgage Pass-through
Certificates WaMu Series 2007-OA4 Trust, and
for Washington Mutual Mortgage Pass-through
Certificates MWALT Series 2007 OC-1 Trust,

Defendants.

No. 10-cv-2070-MJP

DECLARATION OF FRED
BURNSIDE IN SUPPORT OF
SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

Note on Motion Calendar:
Friday, December 30, 2011

I, Fred Burnside, hereby declare as follows:

1. ***Identity of Declarant and Summary of Materials.*** I am a partner in the law firm of Davis Wright Tremaine LLP. I am one of counsel of record for defendants in this matter. I make this declaration based on my personal knowledge for the purpose of authenticating documents attached to this Declaration.

2. ***Order in Marukyan v. JPMorgan Chase Bank, NA.*** I was counsel of record in prior litigation—Marukyan v. JPMorgan Chase Bank, NA, No. 10-0478JLR (W.D. Wash. 2010). Mr. Mueller in that case filed untimely and serial declarations in response to Defendant's dispositive motion. A true and correct copy of Judge Robart's opinion granting Defendant authorization to file a surreply is attached to this declaration as Exhibit A.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Fred Burnside

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Edward L. Mueller
elm@muellerlawfirm.net.

DATED this 30th day of December, 2011.

By s/ Fred Burnside

Fred Burnside, WSBA # 32491
Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
Ph: 206.622.3150 Fax: 206.757.7700
Email: fredburnside@dwt.com

EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ANDRIAS MARUKYAN, et al.,

Plaintiffs,

v.

JPMORGAN CHASE BANK, et al.,

Defendants.

CASE NO. C10-0478JLR

ORDER GRANTING LEAVE TO
FILE SURREPLY

Before the court is Defendant JPMorgan Chase Bank's ("Chase") motion to strike or, in the alternative, permission to file surreply (Dkt. # 13). For the reasons stated, the court GRANTS in part and DENIES in part the motion. Chase shall file a surreply consistent with this order no later than June 18, 2010.

On March 25, 2010, Chase moved to dismiss Plaintiffs' complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) (Dkt. # 3). Plaintiffs' response to the motion was due on April 12, 2010. *See* Local Rules W.D. Wash. CR 7(b). Prior to the due date, Plaintiffs' counsel requested an extension of the time to respond to the motion. Chase

1 agreed to the extension and the parties entered into a stipulation extending Plaintiffs'
2 deadline to respond by one week to April 19, 2010, and re-noting Chase's motion to
3 April 30, 2010. (Dkt. # 6.)

4 Plaintiffs failed to file a responsive brief on April 19, 2010. On April 22, 2010,
5 Plaintiffs' counsel, Edward L. Mueller, filed his own declaration attempting to clarify and
6 explain facts set forth in Plaintiffs' complaint and requesting leave to amend the
7 complaint to comport with new evidence disclosed by Chase during initial discovery in
8 this case. (*See generally* Mueller Decl. (Dkt. # 8).) According to Mr. Mueller, upon
9 reviewing the additional documentation provided by Chase that was attached to the
10 declaration of Brianne Siriwan, he realized that the complaint contains a claim that has no
11 merit. (*Id.* ¶ 10.) Mr. Mueller declared that he would file a motion for leave to amend
12 the complaint to remove the meritless claim and add a claim based on Chase's alleged
13 failure to provide two written copies of the Notice of Right to Rescind or the Truth in
14 Lending Disclosure Statement. (*Id.*) As of the date of this order, however, Plaintiffs
15 have not sought leave to amend their complaint.¹

16 On April 26, 2010, a week after Plaintiffs' response was due, Plaintiffs filed two
17 declarations: Declaration of Andrias Marukyan and Declaration of Armine Eloyan
18 Marukyan (Dkt. ## 9, 10). The declarations set forth the facts Plaintiffs rely upon for
19 their claim that certain loan documents were not delivered to them, which they contend

21 ¹ Despite stating that he would file his motion for leave to amend "as soon as possible," it
22 has been five weeks since Mr. Mueller discovered that Plaintiffs' complaint contains a claim that
lacks merit and he has not moved to amend the complaint. (Mueller Decl. ¶ 10.)

1 forms the predicate for their new claim against Chase pursuant to the Truth in Lending
2 Act. (*See generally* Andrias and Armine Marukyan Decl's.) As of April 26, 2010,
3 however, Plaintiffs still had not filed a response to Chase's motion to dismiss.

4 Chase filed a reply brief on April 29, 2010, addressing the three declarations filed
5 by Plaintiffs. (Dkt. # 11.) Chase filed its reply at 5:00 p.m. At three minutes to midnight
6 on the 29th, Plaintiffs finally filed their response to Chase's motion to dismiss.² (Dkt. #
7 12.) Chase now moves the court to strike the untimely responsive brief or, in the
8 alternative, permit Chase to file a surreply responding to the claims made in Plaintiffs'
9 response.

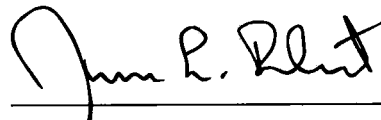
10 This court's principal objective in adjudicating matters before it is to ensure the
11 "just, speedy, and inexpensive determination of every action and proceeding." Fed. R.
12 Civ. P. 1. Counsel's dilatory conduct and disregard for this court's rules not only reflects
13 poorly on his ability to practice law but also is detrimental to his clients. Although the
14 court is persuaded by Chase's arguments in support of its motion to strike Plaintiffs'
15 untimely and over-length response, the court recognizes that this only further punishes
16 Plaintiffs for the fault of their attorney. Accordingly, the court cautions Mr. Mueller to
17 strictly adhere to all due dates in this matter or risk having Plaintiffs' pleading stricken
18 from the record. The court, however, grants Chase's motion to file a surreply to respond

21 ² As Chase points out, the response was filed "at 11:57 p.m. on Thursday, April 2[9],
22 2010—10 days late, seven hours after Chase already filed its reply . . . , and 3 minutes before the
Noting Date." (Mot. at 1.)

1 solely to the issues raised in Plaintiffs' untimely response to the motion to dismiss. The
2 surreply shall be no longer than 12 pages and shall be filed no later than June 18, 2010.

3 Based on the foregoing, the court GRANTS in part and DENIES in part Chase's
4 motion to strike or, in the alternative, for permission to file surreply (Dkt. # 13). The
5 clerk is directed to note the motion to dismiss (Dkt. # 3) for June 18, 2010.

6 Dated this 11th day of June, 2010.

7
8 

9
10 JAMES L. ROBART
United States District Judge

EXHIBIT B

Burnside, Fred

From: Ed Mueller <elm@muellerlawfirm.net>
Sent: Monday, March 07, 2011 1:57 PM
To: Sullivan, Matthew; alin@McCarthyHolthus.com
Cc: Burnside, Fred
Subject: Auxier Financia Group LLC v. Quality Loan Service Corp. et al -- Plaintiff's initial disclosures
Attachments: Plaintiff's Initial Disclosures-per FRCP 26(a)(1) (A) -.docx

Matt and Albert,

Attached are Plaintiff's Initial disclosures. The attachment is an advanced courtesy copy. I apologize for their lateness. I am sending them with ABC Legal Services to Matt Sullivan, and by mail to Albert Lin.

Ed Mueller

The Honorable Marsha J. Pechman

Edward L. Mueller, WSBA # 264
Mueller & Associates, Inc. P.S.
2050 112th Avenue, N.E., Suite 110
Bellevue, WA 98004
Tel. # (425) 457 7600
Fax # (425) 457 7601
e-mail: elm@muellerlawfirm.net
Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

AUXIER FINANCIAL GROUP LLC, et. al
Plaintiff,

vs.

No. 2:10-cv-02070 MJP.

QUALITY LOAN SERVICE CORP. of
WASHINGTON; JP MORGAN CHASE
BANK, N.A.; Bank of America N.A. as
Successor by Merger to LASALLE BANK
NA as TRUSTEE for Washington Mutual
Mortgage Pass-through Certificates WaMu
Series 2007- OA4 Trust, and as TRUSTEE
for Washington Mutual Mortgage Pass-
Through Certificates MWALT Series 2007
OC1 Trust.
Defendants.

Plaintiff's Initial Disclosures
pursuant to FRCP 26(a)(1)(A)

Plaintiff Auxier Financial Group, LLC, by and through its legal counsel of record
submits the following as its Initial Disclosures pursuant to FRCP 26 (a)(1)(A.):

//

//

Plaintiff's Initial Disclosures

- Page 1-

MUELLER & ASSOCIATES, INC., P.S.

ATTORNEYS AT LAW
2050 – 112th Avenue N.E. Suite 110
Bellevue, Washington 98004
Ph. (425) 457-7600; FAX (425) 457-7601

1 **1. Name, address and telephone number, if known, or each individual likely to have**
2 **discoverable information, etc. as provided in FRCP 26(a)(1)(A)(i):**

3 A. Josh Auxier:

4 Address: c/o Edward L. Mueller
5 Mueller & Associates, Inc. P.S.
6 2050 112th Ave. N.S., Ste 110
7 Bellevue, WA 98004
8 Telephone: (425) 456-7800

9 Mr. Auxier is the managing member of Plaintiff, Auxier Financial Services, LLC.
10 He has knowledge of facts and the probable sources of facts that support the Plaintiff's
11 complaint.

12 B. Joseph R. Sellars:

13 Address: 10929 36th Street NE¹
14 Lake Stevens, WA 98258
15 Tel. # (425) 754-8862

16 Mr. Sellars is the one of the co-owners and the representative of the sellers of the real
17 property located at 2525 Center Road, Everett, WA 98204, with whom Mr. Auxier and other
18 persons representing Auxier Financial Group LLC dealt in arranging for the acquisition of that
19 parcel of real property. He also is the sole signer of the promissory note dated February 22,
20 2007, payable to Washington Mutual Bank, FA, payment of which note is secured by the deed
21 of trust recorded under Snohomish County Auditor's No. 200702270788, which deed of trust
22 encumbers the property at 2525 Center Road Everett WA 98204. Mr. Sellars has knowledge
of the acquisition by Auxier Financial Group, LLC of his (Joe Sellars) and Greg Greene's co-
ownership interest in the property at 2525 Center Road, Everett, WA 98204,

¹ This is the last address and telephone number for Joseph Sellars known to Plaintiff.

1 C. Greg Greene:

2 Address: unknown to Plaintiff or Plaintiff's counsel at this time.

3 Mr. Greene was the co-owner with Mr. Sellars of the property at 2525 Center Road,
4 Everett, WA 98204. Mr. Greene probably has some knowledge of the sale of his ownership of
5 an undivided part-interest in the property located at 2525 Center Road, Everett, WA 98204.
6 Plaintiff does not know the extent or limit of Mr. Greene's knowledge of the sale transaction to
7 Auxier Financial Group, LLC, or the earlier promissory note dated February 22, 2007, payable
8 to Washington Mutual Bank FA (which was signed only by Joseph R. Sellars.) but Mr.
9 Greene did co-sign with Mr. Sellars the deed of trust also dated February 22, 2007, that
10 secures the payment of the note, and about 25 months later did co-sign with Mr. Sellars the
11 purchase and sale agreement and various closing documents, in the sale of the co-ownership
12 interest of Mr. Sellars and Mr. Greene to Auxier Financial Group LLC. Presumably Mr.
13 Greene may have some knowledge of the events when he signed the various documents.

14 D. Cherie Goldsmith:

15 Address: address and telephone number unknown to Plaintiff at this time.

16 Ms Goldsmith was the closing agent/LPO, representing 1st Choice Escrow. She
17 handled the closing of the transaction by which Auxier Financial Group, LLC acquired the co-
18 ownership interest of Joseph R. Sellars and Greg Greene in the real property the address of
19 which is 2525 Center Road, Everett, WA 98204. Presumably Ms Goldsmith may have some
20 knowledge and recollection of the closing, and the payments made in connection with the
21 closing. In any event she probably would have knowledge of the location of the escrow
22 closing file.

1 E. Heidi Velez-Brown.

2 Address: 12209 55th Ave,
3 Marysville, WA 98271
4 Tel. #: (360) 547-2458.

5 Ms Velez-Brown was one of the representatives of the buyer, Auxier Financial Group,
6 LLC, who had contact with Joseph R. Sellars regarding the sale of the real property at 2525
7 Center Road, Everett, WA 98204. She probably has knowledge of such contacts.

8 F. Maurine Chapman.

9 Address: 205 S Dunham Ave ²
10 Arlington, WA 98223
11 Mailing address: P.O. Box 646,³
12 Arlington. WA 98223
13 Tel. # (206) 407 8141

14 Ms. Chapman was a representative of the Buyer, Auxier Financial Group. LLC, who
15 kept the minutes of the meeting authorizing Heidi Velez-Brown to act as representative of
16 Auxier Financial Group, LLC to arrange the purchase of the owners' interests of Joseph R.
17 Sellars and Greg Greene in that real property the address of which is 2525 Center Road,
18 Everett, WA 98204. She may have information concerning the negotiations for the acquisition
19 by Auxier Financial Group LLC of the owner's interest of Mr. Sellars and Mr. Greene.

20 G. An individual female representative of the Successor Trustee (Quality Loan
21 Service Corp. with Mr. Auxier spoke by telephone ay (866)745-7711 on or about
22 October 18-20, 2010 requesting an updated reinstatement figure on the loan to

² This address is unverified, but it is the last address for this person known to Plaintiff.

³ This mailing address has been confirmed by Ms Chapman.

1 avoid the second foreclosure may have some knowledge of the calls. The address
2 at which she was located is not known to Plaintiff or Mr. Auxier.

3 Plaintiff believes that individual may have kept a record of the telephone calls.

4 H. An individual male representing the Servicer (JPMorgan Chase Bank, N.A.) with
5 whom Mr. Auxier spoke by telephone at (800) 848-9136 on or about
6 October 18-20, 2010 requesting an updated reinstatement figure on the loan to
7 avoid the second foreclosure may have some knowledge of the calls. The address
8 at which the Servicer's representative was located is not known to Plaintiff or Mr.
9 Auxier.

10 Plaintiff believes that individual may have kept a record of the telephone calls.

11
12 **2. Documents described by category and location that are in the possession**
13 **custody or control of Plaintiff, and may be used to support its claims or defenses,**
14 **etc. as provided in FRCP 26(a)(1)(A)(ii):**

15 Plaintiff has possession, custody or control of the following categories of documents:

- 16 A. Documents related to the purchase of the co-ownership interests of Joseph
17 R. Sellars and Greg Green of the real property at 2525 Center Road, Everett,
18 WA 98204. Copies of the documents are in possession of Plaintiff.
- 19 B. Documents showing reinstatement of the loan that was in foreclosure at the
20 time Auxier Financial Group, LLC acquired the real property at 2525 Center
21 Road, Everett, WA 98204 from Joseph R. Sellars and Greg Greene. Copies of the
22 documents are in the possession of or obtainable by Plaintiff.

23 Copies of the documents will be produced for review and copying at the request of any
24 defendants.

25 **3. A computation of each category of damages claimed by the disclosing party, as**
26 **provided in FRCP 26(a)(1)(A)(iii):**

1 Plaintiff has not yet had sufficient information to compute possible damages related to
2 its claims in the complaint. Plaintiff reasonably expects that such damages probably cannot
be determined until some of its discovery has been done.

3 **4. Identification of any insurance as provided in FRCP 26(a)(1)(A)(iv):**

4 Plaintiff knows of no such insurance policy at this time. Discovery by Plaintiff may
identify such insurance.

5 Dated March 7, 2011.

Mueller & Associates Inc. P.S.

6
7 By Edward L. Mueller WSBA # 264
Attorney for Plaintiff
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

EXHIBIT C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AUXIER FINANCIAL GROUP LLC,

Plaintiff,

v.

JP MORGAN CHASE BANK, N.A.; Bank of
America N.A. as Successor by Merger to
LASALLE BANK N.A. as TRUSTEE for
Washington Mutual Mortgage Pass-through
Certificates WaMu Series 2007-OA4 Trust, and
for Washington Mutual Mortgage Pass-Through
Certificates MWALT Series 2007 OC-1 Trust,

Defendants.

No. C 10-2070 MJP

DEFENDANTS' FIRST SET OF
INTERROGATORIES AND
REQUESTS FOR PRODUCTION
TO PLAINTIFF AUXIER
FINANCIAL GROUP LLC

TO: Auxier Financial Group LLC, Plaintiff;

AND TO: Ed Mueller, Mueller & Associates, Attorneys for Plaintiff.

I. INSTRUCTIONS

In accordance with the Federal Rules of Civil Procedure, Defendants request that you answer the following discovery requests fully and under oath. Pursuant to Fed. R. Civ. P. 33, you are to serve your written responses to the interrogatories on counsel for Defendants within 30 days after service of these requests. In accordance with Fed. R. Civ. P. 34, Defendants also request that you produce, or permit it to inspect and copy, the documents and things specified

1 in these requests for production. Please produce the designated documents at the law offices of
 2 Davis Wright Tremaine LLP, Suite 2200, 1201 Third Avenue, Seattle, Washington, 98101-
 3 3045, at a mutually agreed-upon time within 30 days of the date of service of these requests.

4 In answering these interrogatories and requests for production of documents, furnish
 5 such information as is available to you, regardless of whether this information is obtained
 6 directly by you, through your agents or representatives, or anyone acting on your behalf or on
 7 their behalf. If you cannot answer these interrogatories and requests for production in full,
 8 answer to the extent possible, specify the reasons for your inability to answer the remainder,
 9 and state whatever information or knowledge you have concerning the unanswered portion.

10 Please note that certain of these discovery requests are continuing in nature. If you
 11 obtain, directly or indirectly, additional information as defined by Fed. R. Civ. P. 26(e)
 12 between the time your answers and responses are served and the time of trial, you must
 13 promptly bring such information to Defendants' attention through supplemental answers and
 14 responses. If any such information or documentation is not furnished, Defendants may move to
 15 exclude from evidence such information or documentation, or for other appropriate relief.

16 If your answer to any interrogatory is "N/A" or "not applicable," describe in detail your
 17 reasons for making such a reply.

18 Documents produced in response to Defendants' request for production of documents
 19 pursuant to Fed. R. Civ. P. 34 should be expressly identified by reference to the request for
 20 production to which they pertain.

21 II. PRIVILEGE

22 If you claim any privilege with respect to any information called for by an interrogatory
 23 or a request for production or any part thereof, identify the type of privilege which is claimed,
 24 state the basis for the claim of privilege, identify the communication, document or other item as
 25 to which the privilege is claimed, and state the subject matter thereof. If you claim any such
 26 privilege, you should nevertheless answer or respond to the interrogatory or request for
 27 production to the extent that it calls for information as to which you do not claim a privilege.

III. DEFINITIONS

A. "You," "your," "Plaintiff," or "Auxier" refers to Plaintiff Auxier Financial Group LLC and all present and former attorneys, agents, representatives, employees or other persons who possess, or who have obtained information for or on behalf of the Plaintiff.

B. "Defendants" are JPMorgan Chase Bank, N.A. ("Chase"), and Bank of America, N.A. ("Bank of America"), both singularly and collectively, as well as any of their employees, agents, attorneys, or other representatives.

C. "Property" refers to the real property identified by a common address of 2525 Center Road, Everett, Washington 98204 and a tax parcel number of 005380-000-162-02. A legal description of the Property is found on page 3 of the Complaint.

D. "Loan" refers to the \$298,000 loan Washington Mutual Bank, FA extended to Joseph Sellars in February 2007.

C. "Person" refers to and includes any individual, corporation, partnership, association, labor union, or any other form of business, social or legal entity.

D. "Document" has the same expansive meaning as identified in Federal Rule of Civil Procedure 34(a)(1)(A). The term "document" includes documents the person responding to the interrogatory possesses, as well as documents that other persons possess of which the person responding is aware.

E. To "identify" a natural person, means to state the full name or assumed name of the individual, the individual's present or last known business and home address, the individual's present or last known business and home phone numbers, the individual's present or last known business affiliation and titles; and, if different, the individual's business affiliation and titles at the time to which the interrogatory or your response to the interrogatory refers.

F. To "identify" a document means to state its title and date; identify the author or person who prepared it and any signatories to it; give the type of document (e.g., letter, memorandum, agreement, etc.); its present location and the name and address of the custodian;

1 and a statement of the subject and substance of the document, or principal terms and
 2 provisions. If the document so identified was, but is no longer, in your possession, custody and
 3 control, state what disposition has been made of it.

4 G. To "identify" a communication means to set forth the date, time, and location of
 5 the communication, the persons present, the substance of the communication, and whether any
 6 documents exist that memorialize or otherwise relate to the communication.

7 H. "Describe" means to fully, faithfully, and accurately set forth every fact and/or
 8 circumstance, including omissions, which in any way relates to the manner in inquiry.

9 IV. OBJECTIONS

10 If you object to answering any interrogatory or request for production, in whole or in
 11 part, state your objection and the factual or legal reasons supporting it.

12 V. INTERROGATORIES AND REQUESTS FOR PRODUCTION

13
 14 INTERROGATORY NO. 1: Identify all persons who participated in the preparation of
 15 your answers to these interrogatories and responses to requests for production, including all
 16 persons who provided information or documents that were used in preparing your responses to
 17 these discovery requests.

18 ANSWER:

19
 20
 21
 22 REQUEST FOR PRODUCTION NO. 1: Produce a copy of the Real Estate Contract
 23 dated March 19, 2009, between Auxier, Joseph Sellars, and Greg Greene.

24 RESPONSE:

1
2 REQUEST FOR PRODUCTION NO. 2: Produce a copy of the "12 month extension"
3 Auxier entered into with Mr. Sellars in 2010, which is referenced in Mr. Sellars' voluntary
4 bankruptcy petition, filed in U.S. Bankruptcy Court for the Western District of Washington
5 under cause number 10-14955-KAO.

6 RESPONSE:
7
8
9

10 REQUEST FOR PRODUCTION NO. 3: Produce a copy of any other agreement or
11 contract between Auxier, Joseph Sellars, and/or Greg Greene that relates to the Loan or the
12 Property, including but not limited to any agreement entered into after the execution of the Real
13 Estate Contract.

14 RESPONSE:
15
16
17

18 REQUEST FOR PRODUCTION NO. 4: Produce copies of all documents relating to
19 your acquisition of your interest in the Property or the Loan, including, but not limited to,
20 correspondence, memoranda, drafts of the Real Estate Contract referenced in Request for
21 Production No. 1, and title reports.

22 RESPONSE:
23
24
25

26 REQUEST FOR PRODUCTION NO. 5: Produce copies of all documents that evidence
27 negotiations between Auxier and any other entity that refer to:

- 1 1. The Loan;
- 2 2. The Real Estate Contract between Auxier, Mr. Sellars, and Mr. Greene;
- 3 3. The 12-month extension between Auxier and Mr. Sellars;
- 4 4. Any interest in the Property.

5 RESPONSE:

6

7

8

9 INTERROGATORY NO. 2: Identify each and every entity you made monthly
10 mortgage payments to and list the dates you made those payments.

11 ANSWER:

12

13

14

15 REQUEST FOR PRODUCTION NO. 6: Produce all documents evidencing, reflecting,
16 supporting, and/or undermining your response to the preceding Interrogatory, including
17 cancelled checks or money orders.

18 RESPONSE:

19

20

21

22 INTERROGATORY NO. 3: Explain the relationship between Auxier and Mr. Sellars,
23 identifying how Mr. Sellars first became acquainted with Auxier, the date of the first meeting
24 between Auxier and Mr. Sellars regarding the Property, and any other business deals between
25 Mr. Sellars and Auxier.

26 ANSWER:

27

1
2
3 REQUEST FOR PRODUCTION NO. 7: Produce all correspondence or other written
4 communication between Auxier and Mr. Sellars about the Property, the Loan, the Real Estate
5 Contract, or the 12-month extension (referenced in Request for Production No. 2), including,
6 but not limited to, emails.

7 RESPONSE:
8
9
10

11 INTERROGATORY NO. 4: Explain the relationship between Auxier and Mr. Greene,
12 identifying how Mr. Greene first became acquainted with Auxier, the date of the first meeting
13 between Auxier and Mr. Greene regarding the Property, and any other business deals between
14 Mr. Greene and Auxier.

15 ANSWER:
16
17
18

19 REQUEST FOR PRODUCTION NO. 8: Produce all correspondence or other written
20 communication between Auxier and Mr. Greene about the Property, the Loan, the Real Estate
21 Contract, or the 12-month extension (referenced in Request for Production No. 2), including,
22 but not limited to, emails.

23 RESPONSE:
24
25
26
27

1 INTERROGATORY NO. 5: Identify each and every instance you contacted Chase or
2 Quality Loan Service to request a reinstatement quote for the Loan by identifying the date of
3 each contact, the individual you spoke with, and the result of the contact.

4 ANSWER:
5
6
7

8 REQUEST FOR PRODUCTION NO. 9: Produce all documents that evidence each of
9 the instances identified in your response to Interrogatory No. 6.

10 RESPONSE:
11
12
13

14 REQUEST FOR PRODUCTION NO. 10: Produce all documents that you provided to
15 Chase or Quality Loan Service that would authorize either entity to release information about
16 the Loan to you.

17 RESPONSE:
18
19
20

21 INTERROGATORY NO. 6: Identify each and every basis for your assertion that “both
22 Quality Loan Service & JPMorgan [*sic*] were simply attempting to delay” providing you with
23 reinstatement figures for the Loan, as set forth in paragraph 2.7 of the Complaint.

24 ANSWER:
25
26
27

1 REQUEST FOR PRODUCTION NO. 11: Produce copies of all documents evidencing,
2 reflecting, supporting, or undermining your answer to the preceding Interrogatory.

3 RESPONSE:
4
5

6 INTERROGATORY NO. 7: Identify the steps you undertook to research the
7 ownership of the Loan, including but not limited to the steps you undertook to determine if the
8 loan was securitized.

9 ANSWER:
10
11
12

13 REQUEST FOR PRODUCTION NO. 12: Produce copies of all documents evidencing,
14 reflecting, supporting, and/or undermining your answer to the preceding Interrogatory.

15 RESPONSE:
16
17
18

19 REQUEST FOR PRODUCTION NO. 13: Produce all documents that relate or refer to
20 the Property or the Loan.

21 RESPONSE:
22
23
24

25 INTERROGATORY NO. 8: Identify each person, including current or former
26 employees of Defendants, friends, family members, etc., with whom you have discussed the
27

1 allegations in this lawsuit. For each person, please include their name, phone and address, the
2 date of the conversation(s), and any other witnesses to or participants in the conversation.

3 ANSWER:
4
5
6
7

8 INTERROGATORY NO. 9: Identify every factual basis for your belief that you have
9 contractual or other rights with respect to Defendants that arise from a loan to Mr. Sellars and
10 Mr. Greene.

11 ANSWER:
12
13
14

15 REQUEST FOR PRODUCTION NO. 14: Produce all documents that support,
16 undermine, or otherwise address your responses to the preceding Interrogatory.

17 RESPONSE:
18
19
20

21 REQUEST FOR PRODUCTION NO. 15: Produce all documents that evidence, refer
22 to, or involve the bankruptcy action initiated by Mr. Sellars and his wife in April 2010, which
23 was pending in the U.S. Bankruptcy Court for the Western District of Washington under cause
24 no. 10-14955-KAO, including but not limited to documents you filed with the court,
25 correspondence, and memoranda.

26 RESPONSE:
27

1
2
3 INTERROGATORY NO. 10: Describe each element of the damages you seek to recover,
4 stating the dollar amount of each element of your claimed damages, the manner in which you
5 calculate each element of your claimed damages, and the basis for that calculation.

6 ANSWER:
7
8
9

10 REQUEST FOR PRODUCTION NO. 16: Produce all documents that support,
11 undermine, or otherwise address your responses to the preceding Interrogatory.

12 RESPONSE:
13
14
15

16 INTERROGATORY NO. 11: Identify each action by each Defendant that caused you
17 harm, and how you were harmed as a result.

18 ANSWER:
19
20
21

22 REQUEST FOR PRODUCTION NO. 17: Produce all documents that support,
23 undermine, or otherwise address your responses to the preceding Interrogatory.

24 RESPONSE:
25
26
27

1 INTERROGATORY NO. 12: Identify each provision of the Washington Deed of Trust
2 Act that each Defendants allegedly violated, and the facts supporting that alleged violation(s).

3 ANSWER:
4
5
6

7 REQUEST FOR PRODUCTION NO. 18: Produce all documents that support,
8 undermine, or otherwise address your responses to the preceding Interrogatory.

9 RESPONSE:
10
11
12

13 INTERROGATORY NO. 13: Identify each per se unfair trade practice (as identified by
14 the Washington Legislature) that you claim each Defendant has committed.

15 ANSWER:
16
17
18

19 REQUEST FOR PRODUCTION NO. 19: Produce all documents that support,
20 undermine, or otherwise address your responses to the preceding Interrogatory.

21 RESPONSE:
22
23
24

25
26 INTERROGATORY NO. 14: Identify each deceptive act or practice you claim each
27 Defendant has committed.

1 ANSWER:

2
3
4
5 REQUEST FOR PRODUCTION NO. 20: Produce all documents that support,
6 undermine, or otherwise address your responses to the preceding Interrogatory.

7 RESPONSE:

8
9
10
11
12 INTERROGATORY NO. 15: Identify each action by each Defendant that has the
13 capacity to deceive a substantial portion of the public.

14 ANSWER:

15
16
17
18
19 INTERROGATORY NO. 16: Identify each action by each Defendant that impacts the
20 public interest.

21 ANSWER:

22
23
24
25 INTERROGATORY NO. 17: Explain how the conduct of each Defendant caused
26 injury to your business or property.

27 ANSWER:

1
2
3 REQUEST FOR PRODUCTION NO. 21: Produce all documents that support,
4 undermine, or otherwise address your responses to the preceding Interrogatory.

5 RESPONSE:
6
7
8
9

10 INTERROGATORY NO. 18: With respect to your slander of title claim, identify each
11 false statement made by each Defendant.

12 ANSWER:
13
14
15

16 REQUEST FOR PRODUCTION NO. 22: Produce all documents that support,
17 undermine, or otherwise address your responses to the preceding Interrogatory.

18 RESPONSE:
19
20
21
22

23 INTERROGATORY NO. 19: With respect to your slander of title claim, identify all
24 facts evidencing that any Defendant acted maliciously toward you.

25 ANSWER:
26
27

1
2 REQUEST FOR PRODUCTION NO. 23: Produce all documents that support,
3 undermine, or otherwise address your responses to the preceding Interrogatory.

4 RESPONSE:
5
6
7

8
9 INTERROGATORY NO. 20: With respect to your slander of title claim, explain the
10 factual bases for any pecuniary loss you suffered as a result of any allegedly false statement
11 made by a Defendant.

12 ANSWER:
13
14
15
16

17 REQUEST FOR PRODUCTION NO. 24: Produce all documents that support,
18 undermine, or otherwise address your responses to the preceding Interrogatory.

19 RESPONSE:
20
21
22
23

24 INTERROGATORY NO. 21: With respect to your slander of title claim, identify all
25 facts showing that any allegedly false statement made by a Defendant defeated your title to the
26 property at issue in this litigation.

27 ANSWER:

1
2
3 REQUEST FOR PRODUCTION NO. 25: Produce all documents that support,
4 undermine, or otherwise address your responses to the preceding Interrogatory.

5 RESPONSE:
6
7
8
9

10 REQUEST FOR PRODUCTION NO. 26: Please produce any written or recorded
11 statements you have taken from anyone relating to any of the claims, defenses, contentions,
12 allegations or facts in this litigation.

13 RESPONSE:
14
15
16

17 DATED this 21st day of September, 2011.

18 Davis Wright Tremaine LLP
19 Attorneys for Defendants

20 By 
21

Fred B. Burnside, WSBA #32491
Matthew Sullivan, WSBA #40873
22
23
24
25
26
27

CERTIFICATE OF SERVICE

I declare under penalty of perjury that on this day I caused a copy of the foregoing document to be served upon the following:

Edward L. Mueller	()	By U.S. Mail
Mueller & Associates, Inc., P.S.	()	By Federal Express
2320 120 th Avenue NE, Suite E0250	()	By Facsimile
Bellevue, WA 98005	(X)	By Messenger

Dated at Seattle, Washington this 21st day of September, 2011.



Anita Griffin

EXHIBIT D

Burnside, Fred

From: Sullivan, Matthew
Sent: Thursday, November 10, 2011 10:42 AM
To: Ed Mueller
Cc: Sullivan, Matthew
Subject: Outstanding Auxier Discovery

Ed,

What's the status of the responses to our discovery requests in Auxier? Last Thursday, you told me you would provide them by the end of last week. When can we expect responses?

Thanks.

Matt Sullivan | Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200 | Seattle, WA 98101
Tel: (206) 757-8257 | Fax: (206) 757-7257
Email: matthewsullivan@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Shanghai | Washington, D.C.

Burnside, Fred

From: Sullivan, Matthew
Sent: Thursday, November 17, 2011 2:42 PM
To: Ed Mueller
Cc: Sullivan, Matthew; Burnside, Fred
Subject: RE: Outstanding Auxier Discovery

Ed,

Just left a voicemail message for you. When can we expect Auxier's discovery responses? As you know, deadlines are fast approaching and you told me you'd provide responses to us two weeks ago.

Matt Sullivan | Davis Wright Tremaine LLP

From: Sullivan, Matthew
Sent: Thursday, November 10, 2011 10:42 AM
To: Ed Mueller
Cc: Sullivan, Matthew
Subject: Outstanding Auxier Discovery

Ed,

What's the status of the responses to our discovery requests in Auxier? Last Thursday, you told me you would provide them by the end of last week. When can we expect responses?

Thanks.

Matt Sullivan | Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200 | Seattle, WA 98101
Tel: (206) 757-8257 | Fax: (206) 757-7257
Email: matthewsullivan@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Shanghai | Washington, D.C.

Burnside, Fred

From: Sullivan, Matthew
Sent: Monday, November 28, 2011 11:26 AM
To: Ed Mueller
Cc: Sullivan, Matthew; Burnside, Fred
Subject: Auxier's Discovery Responses

Ed,

Please provide us with an update on when we can expect Auxier Financial's discovery responses. As you know, the discovery deadline has already passed and we are fast approaching the dispositive motion deadline. We need Auxier Financial's discovery responses to move this case forward.

Thanks.

Matt Sullivan | Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200 | Seattle, WA 98101
Tel: (206) 757-8257 | Fax: (206) 757-7257
Email: matthewsullivan@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Shanghai | Washington, D.C.